

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re: : Chapter 7
GATEWAY DEVELOPMENT GROUP, INC : Case No.: 21-22304 (RDD)
Debtor.

**CREDITOR JAMES CARNICELLI JR'S STATEMENT OF NO OBJECTION
TO JOHN FARERI'S MOTION FOR STIPULATION AND ORDER
MODIFYING THE AUTOMATIC STAY TO PERMIT PAYMENT
OF DEFENSE COSTS UNDER EPLI POLICY**

Creditor James Carnicelli Jr. (“Mr. Carnicelli”), by his undersigned attorneys, respectfully submits this statement of no objection to Fareri’s¹ Motion for Stipulation and Order Modifying the Automatic Stay to Permit Payment of Defense Costs Under an EPLI Policy (the “Motion”). Mr. Carnicelli states as follows:

1. Fareri seeks an order lifting the automatic stay to allow payment of his defense costs in the Civil Action, in which he is defending himself against claims of breach of his fiduciary duties to the Debtor and other claims alleged to have causes hundreds of millions of dollars in damages to the Debtor. Fareri contends that those defense costs are covered, in part, by the Employment Practices Liability Policy identified in the Motion.

2. Although Fareri states in the Motion that the Policy was “issued to the Debtor,” he concedes in the next sentence that that in fact the Policy was issued to “Westchester Electrical

¹ Capitalized terms that have not been defined have the meaning provided in Fareri’s Motion.

Systems Corp.” (“Wescorp”) and that the Debtor, The Gateway Development Group, Inc. (“Development”) is simply an Additional Named Insured. (Motion ¶ 4.)

3. Fareri does not contend that he, personally, is an Additional Named Insured.

4. Fareri asserts that the Policy period for which he seeks coverage is September 30, 2020 to September 30, 2021. It should be noted, however, that Fareri suspended Development’s operations as of October 18, 2019. Shortly thereafter, Fareri transferred all of Development’s employees, projects and other assets and transferred them to other Fareri-owned companies, including Wescorp. Fareri’s transfer of Debtor’s opportunities and business is the subject of the Chapter 7 Trustee’s claims against Fareri, and in large part is the basis for Mr. Carnicelli’s \$300,000,000 proof of claim. Fareri offers no explanation as to why Development would be covered by employment insurance a year after it ceased to operate and have employees, and transferred its business to other Fareri companies.

5. Fareri’s invocation of a policy issued to Westcorp, not the Debtor, under the theory that Development is an Additional Named Insured, further supports the conclusion of the Examiner in the companion proceeding *In Re Gateway Kensington LLC* (Case No. 21-22274 (RDD)), that Fareri operates his companies as a single business enterprise without regard for corporate formalities. *See* Examiner’s Report (Kensington ECF Docket No. 106).

6. Notwithstanding the foregoing, Mr. Carnicelli does not object to an order modifying the automatic stay to allow the insurer CIC to pay Fareri’s defense costs to the extent of the Policy’s coverage.

7. Nothing in this statement shall be construed as consent to any funds being provided from Debtor's estate pay for Fareri's defense costs, nor should anything in this statement be construed as a waiver of claims of equitable subordination.

Dated: February 10, 2022

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